

Election with Traverse

Applicants hereby elect the claims of Group (i) with traverse. Also, since the Office stated that either of Group (ii) or Group (iii) will be examined along with Group (i), Applicants hereby further elect Group (ii).

Discussion of Restriction Requirement

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the examiner if restriction is not required. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Applicants submit that the restriction is improper in view of the above and traverse the restriction for the reasons set forth below.

Applicants point out that the claims of Group (ii) and Group (iii) are dependent on the claims of Group (i). Therefore, given the manner in which the claims are structured, the Office will necessarily have to search Class 530, subclass 322, at the same time that it searches Class 514, subclass 8+, when searching Group (ii) or Group (iii). Put another way, art that would be uncovered during the searching and examining of the claims of Group (i) would be considered by the Office in the searching and examining of the claims of Groups (ii) and (iii) and *vice versa*. This is not to say that the claims stand or fall together but, rather, that it would not be unduly burdensome for the Office to search and examine the claims of Groups (i), (ii), and (iii) together. Furthermore, Groups (ii) and (iii) are classified in the same class and subclass. In addition, Applicants point out that, in some instances, cellular proliferation is caused by a virus. In this regard, art that is relevant to methods of inhibiting cellular proliferation may likewise be pertinent to methods of inhibiting a virus, such that the search and examination of Groups (ii) and (iii) would overlap to a certain extent. Evidence of such overlap in the relevance of references mitigates against the need for a restriction requirement.

In view of the foregoing, Applicants submit that the restriction is improper. Therefore, applicants request the withdrawal of the restriction requirement.

In re Appln. of Ts'o et al.
Application No. 09/998,497

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carol Larcher", written over a horizontal line.

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CERTIFICATE OF MAILING

I hereby certify that this RESPONSE TO RESTRICTION REQUIREMENT (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

Date: January 23, 2003

Kathleen Shatz